## REMARKS

### I. STATUS OF THE CLAIMS

Minor amendments are made to various of the claims to improve form.

New claims 21-25 are added. Support for the new claims is found, for example, in FIGS. 1A, 1B, 2, 3A; and the disclosure on page 9, line 38, through page 10, line 2; page 16, lines 15-29; page 17, lines 20-23; page 19, lines 11-25; and page 33, line 20, through page 34, line 2, of the specification.

In view of the above, it is respectfully submitted that claims 1-25 are currently pending.

### II. OBJECTION TO CLAIMS 2, 15 AND 16

The claims are amended herein to overcome the objection.

### III. REJECTION OF CLAIMS 14-16 AND 18 UNDER 35 USC 102 AS BEING ANTICIPATED BY SCHWARTZMAN (US PATENT 6,385,773)

In the present invention as recited, for example, in claim 15, communication of a plurality of signals communicated on a respective node of a network are tested by conducting a test plan. The test plan prescribes measurement of at least one test on the respective node.

Moreover, as recited, for example, in claim 15, results from the at least one test are compared with a user definable alarm limit. A failure time spectrum scan is performed on the respective node when the test results exceed the alarm limit.

Schwartzman discloses a spectrum analyzer for monitoring a node. See, for example, spectrum analyzer 204 and node 108 in FIG. 2A of Schwartzman.

FIG. 3 and the disclosure in column 10, line 15, through column 11, line 6, of Schwartzman, describes the use of spectrum analyzer 204 of Schwartzman. As indicated in these portions of Schwartzman, spectrum analyzer 204 is used to determine if a respective channel has too much noise. If there is too much noise, the system switches to a different channel.

For example, in operations 306 to 312 in FIG. 3 of Schwartzman, a detected bit error rate (BER) is compared against a threshold BER. If the detected BER is higher than the threshold BER, the noise level on the channel is too high. In this event, the spectrum analyzer 204 initiates a search for a cleaner channel, and a switch to the cleaner channel occurs. See, for example, column 10, lines 53-65, of Schwartzman.

Therefore, Schwartzman simply compares a detected BER to a threshold BER, and causes a switch to a cleaner channel when the detected BER is greater than the threshold BER.

No portion of Schwartzman discloses or suggests that a failure time spectrum scan is performed when the detected BER is greater than the threshold BER. Therefore, it is respectfully submitted that no portion of Schwartzman discloses or suggests the performance of a failure time spectrum scan as recited, for example, in claim 15.

The above comments are specifically directed to claim 15. However, it is respectfully submitted that the comments would be useful in understanding various differences of various other rejected claims over Schwartzman.

Please note that new claims 21-25 are added. Claim 21 specifically recites (a) a spectrum analyzer monitoring a plurality of channels corresponding to a respective node of a network in accordance with a test plan for the node, the test plan providing a test in accordance with a channel plan for the plurality of channels; and (b) a controller automatically performing a failure test spectrum scan for the respective node when a result of the test exceeds an alarm limit for the test. Therefore, claim 21 recites the specific use a test plan, a channel plan and a failure test spectrum scan. Claims 24 and 25 recite somewhat similar features as claim 21. See, for example, in FIGS. 1A, 1B, 2, 3A; and the disclosure on page 9, line 38, through page 10, line 2; page 16, lines 15-29; page 17, lines 20-23; page 19, lines 11-25; and page 33, line 20, through page 34, line 2, of the specification.

In view of the above, it is respectfully submitted that the rejection is overcome.

IV. REJECTION OF CLAIMS 1-4, 6 AND 11-13 UNDER 35 USC 103 AS BEING UNPATENTABLE OVER SCHWARTZMAN IN VIEW OF CHEN (US PATENT 6,570,913)

The above comments for distinguishing over Schwartzman also apply here, where appropriate.

In view of the above, it is respectfully submitted that the rejection is overcome.

V. REJECTION OF CLAIMS 5, 7, 8-10, 17, 19 AND 20 UNDER 35 USC 103 AS BEIGN UNPATENTABLE OVER SCHWARTZMAN IN VIEW OF CHEN AND SPRENGER (US PATENT 5,861,882)

The above comments for distinguishing over Schwartzman also apply here, where appropriate.

In view of the above, it is respectfully submitted that the rejection is overcome.

VI. REJECTION OF CLAIMS 1, 14 AND 15 UNDER THE JUDICIALLY CREATED DOCTRINE OF OBVIOUSNESS-TYPE DOUBLE PATENTING IN VIEW OF US PATENT 6,522,987

A terminal disclaimer is submitted herewith in view of US Patent 6,522,987.

In view of the above, it is respectfully submitted that the rejection is overcome.

VII. REJECTION OF CLAIMS 1, 15 AND 15 UNDER THE JUDICIALLY CREATED DOCTRINE OF OBVIOUSNESS-TYPE DOUBLE PATENTING IN VIEW OF US PATENT 6,741,947 IN VIEW OF CHEN

A terminal disclaimer is submitted herewith in view of US Patent 6,741,947.

In view of the above, it is respectfully submitted that the rejection is overcome.
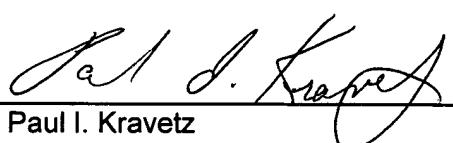
VIII. CONCLUSION

In view of the above, it is respectfully submitted that the application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

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